

11.07.2022
Court No.1
Item No.52
pk/AP

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

**FMAT 8 of 2022
With
CAN 1 of 2022**

**Smt. Joyasri De and Ors.
Vs.
Sri Ranjan De and Ors.**

Mr. Subhasish Misra
Mr. Swarup Das

... For the Appellants.

Ms. Suman Sehanabish (Mandal)
Mr. Alok Sah

... For the respondents 1 to 3.

Mr. Akash Dutta

... For the respondent 4.

The appeal is directed against an interlocutory order dated 14th March 2022 passed in TS No.91 of 2021. By the impugned order the learned Single Judge (Senior Division) Sadar, Cooch Behar has vacated an interim order of injunction in a partition and administration suit. The original order of injunction restrained any of the parties from making any construction, addition or alternation within the premises.

It appears that by the impugned order, the said injunction was lifted, inter alia, on the ground that any construction made, would eventually have

given to and abide by the final result of the partition suit.

There appears to be no dispute between the parties that each of the brothers and sisters are entitled to equal share i.e. about 4.5 decimal each.

Counsel for the respondent submits that the construction being made by her client is necessary since due to rain, the portions of the walls have been affected and the place become inhabitable.

This Court otherwise does not find any infirmity with the impugned order, since it also records that in terms of Section 52 of the Transfer of Property Act, the principle of lis pendens will apply and any subsequent change, transfer or alienation of the property by any member would have to abide by the result of the suit.

This Court, however, in partial modification of this impugned order, directs that the respondent Nos.1, 2 and 3 shall not make any further permanent construction other than effecting repairs and restoration of their existing structure.

Needless to mention, any changes made or construction already effected and existing will have to abide by the final result of the TS No.91 of 2021.

The principle of lis pendens already discussed by the impugned order shall continue to operate.

With the aforesaid observations, the appeal itself and connected applications are disposed of.

(Rajasekhar Mantha, J.)

(Ananda Kumar Mukherjee, J.)